

# HOUSE . . . . . No. 3832

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By Mr. DeLeo of Winthrop, petition of Robert A. DeLeo relative to pilotage fees and liens and remedies of pilots. Transportation.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand and Five.

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### AN ACT RELATIVE TO PILOTS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Chapter 103 of the General Laws is hereby amended by  
2 striking out Section 17, as appearing in the 2002 Official Edition,  
3 and inserting in place thereof the following section:—

4 Section 17. Liens and Remedies of Pilots; Miscellaneous.

5 (a) Any pilotage fees or penalties arising under this chapter  
6 shall create a lien upon the hull and appurtenances of the vessel in  
7 question in favor of any individual pilot or pilot organization to  
8 secure the net recovery of the same.

9 (b) Nothing in this chapter shall be construed so as to diminish  
10 or limit any lien rights arising or otherwise existing under federal  
11 maritime law, under any other body of applicable law, or under  
12 any contract. Any remedy afforded by this section shall be in  
13 addition to any remedy otherwise available to a pilot or pilot orga-  
14 nization to enforce obligations for fees or penalties.

15 (c) (1) A pilot or pilot organization may demand payment in  
16 advance as a condition of providing the vessel with pilotage serv-  
17 ices, and any such demand shall not excuse the vessel, her owner,  
18 master, etc., from any other obligation imposed by law. In the  
19 event of a good-faith dispute as to the liability of said vessel for  
20 pilotage, a deposit of security for said fees has the same effect as  
21 making the pre-payment demanded.

22 (2) In the case of such a dispute, deposit of cash in the amount  
23 of the claimed fees in trust with the Pilot Commissioner(s) for the  
24 District in question shall be a sufficient act of providing security,  
25 as shall any form of security agreed to in writing by the pilot or

26 pilot organization claiming entitlement to fees. Any funds so  
27 deposited shall be paid over to the pilot or pilot organization  
28 claiming the fees ten business days after deposit, unless within  
29 that time the person depositing the security shall demonstrate to  
30 the satisfaction of the Pilot Commissioner(s) for the District in  
31 question that the vessel was not subject to the payment of the fees  
32 in question. The decision of the Pilot Commissioner(s) for the  
33 district in question shall be final.

34 (d.) The provisions of this section shall be severable, such that  
35 if any provision is ruled to be unenforceable the legal effect of the  
36 remainder shall be undiminished.

37 Section 21. Vessels required to employ commissioned pilots;  
38 liability for fees; subject to regulations

39 (a) Every foreign vessel of three hundred and fifty gross tons or  
40 over, and every United States vessel under register of three hun-  
41 dred and fifty gross tons or over, and every other vessel not  
42 exempted by section twenty-eight of this chapter or by the laws of  
43 the United States, entering, departing or shifting within the con-  
44 fines of any district of the commonwealth, or moving from one  
45 district to another, shall be subject to the provisions of this chapter  
46 and to the regulations established by the Pilot Commissioner(s)  
47 for the District affected.

48 (b) The aforesaid tonnage threshold shall be deemed to have  
49 been met if any one or more of the following gross tonnage fig-  
50 ures assigned to, pertaining to, or associated with the vessel in  
51 question shall equal or exceed three hundred and fifty gross tons,  
52 and the content of any one or more of such certificates shall con-  
53 clusively establish the tonnage of the vessel for purposes of deter-  
54 mining its susceptibility to the provisions of this chapter:

55 1) Any gross tonnage figure listed on any certificate pertaining  
56 to the vessel and issued by the United States Coast Guard or the  
57 Commonwealth of Massachusetts;

58 2) Any gross tonnage figure listed on any certificate pertaining  
59 to the vessel and issued by the flag state of the vessel;

60 3) Any gross tonnage figure listed on any certificate pertaining  
61 to the vessel and issued pursuant to any international convention  
62 to which the government of the vessel's flag state is a party; or

63 4) Any gross tonnage figure listed on any certificate pertaining  
64 to the vessel and issued by any classification society recognized

65 by the United States Coast Guard for the issuance of tonnage cer-  
66 tificates.

67 (c) The burden of establishing that a vessel is for any reason  
68 not subject to this chapter shall be upon the vessel and those  
69 responsible for her. The expiration of any certificate aforesaid  
70 shall not diminish the responsibility of the vessel or those respon-  
71 sible for her under this chapter, and no such certificate shall be  
72 deemed to have lost its validity for purposes of establishing the  
73 susceptibility to this chapter unless replaced by a valid certificate  
74 from the same authority, or from a competent successor authority,  
75 as in the case of a change of flag of the vessel or in the case of a  
76 formal change of authorized classification society. The decision  
77 of the Pilot Commissioner(s) for the District in question shall be  
78 final.

79 Section 35. Violations; Penalties; Force Majeure.

80 (a) Navigation of a vessel subject to this chapter without  
81 employment of a commissioned pilot is a violation and a civil  
82 infraction on the part of any person who had the authority or the  
83 practical means to cause, or to prevent, the movement of the  
84 vessel, including but not limited to any person providing or pur-  
85 porting to provide pilotage services, or any vessel's owner, oper-  
86 ator, charterer, master, or agent. Any remedy for such an  
87 infraction shall not diminish any otherwise-existing liability for  
88 pilotage fees.

89 (b) Any natural person who violates this section shall be per-  
90 sonally subject to a civil penalty of not less than one thousand nor  
91 more than ten thousand dollars, and any business corporation,  
92 partnership or other business entity that violates this section shall  
93 be subject to a civil penalty of not less than ten thousand nor more  
94 than fifty thousand dollars, the amount to be assessed by the Pilot  
95 Commissioner(s) for the District in question, whose decision in  
96 the matter shall be given effect in any penalty enforcement pro-  
97 ceedings in any court with the same finality as if it were a deci-  
98 sion of an arbitrator in a civil matter referred to arbitration by  
99 agreement. Said penalty may be enforced in a civil proceeding  
100 brought by the Commonwealth, or in an action brought by a pilot  
101 or pilot organization to recover any pilotage fees associated with  
102 the same events. In the latter event, any penalties recovered, after  
103 reimbursing the costs of any collection efforts (including but not

104 limited to legal fees) shall be paid over to the treasury of the Com-  
105 monwealth.

106 (c) In the case of *force majeure* or other genuine emergency  
107 requiring the movement of a vessel subject to this chapter when  
108 the services of a pilot cannot be obtained, no penalty shall be  
109 assessed, but the burden shall be on the person seeking to avoid  
110 the penalty to establish the genuineness of any claim of *force*  
111 *majeure* or other emergency to the satisfaction of the Pilot Com-  
112 missioner(s) for the District in question, whose decision shall be  
113 final.